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21 *Attorneys for Plaintiff and the Putative Class*

22 **IN THE UNITED STATES DISTRICT COURT**
23 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
24 **SAN FRANCISCO DIVISION**

25 JOSHUA SMITH, individually and on
26 behalf of all others similarly situated,

27 *Plaintiff,*

28 *v.*

29 PEGATRON USA, INC., a California
30 corporation, ASROCK AMERICA, INC.,
31 a California corporation, and FATALITY,
32 INC., d/b/a Fatal1ty, Inc., a Missouri
33 corporation,

34 *Defendants.*

35 Case No. 3:14-cv-01822-CRB

36 **PLAINTIFF'S STATEMENT OF
37 NON-OPPOSITION TO DEFENDANTS'
38 MOTION TO DISMISS AND
39 NOTICE OF INTENT TO FILE
40 FIRST AMENDED COMPLAINT**

41 Judge: Hon. Charles R. Breyer
42 Action Filed: April 21, 2014

1 Plaintiff Joshua Smith (“Plaintiff”) filed this putative class action against Defendants
2 Pegatron USA, Inc., ASRock America, Inc., and Fatality, Inc. (“Defendants”) on April 21, 2014.
3 (Dkt. 1.) On June 12, 2014, Defendants moved to (i) dismiss Plaintiff’s Complaint pursuant to Fed.
4 R. Civ. P. 9(b) and Fed. R. Civ. P. 12(b)(6) and (ii) stay discovery pursuant to Fed. R. Civ. P.
5 26(c). (Dkt. 29.) No other responsive pleadings or motions have been previously filed or served by
6 Defendants.

7 Pursuant to Fed. R. Civ. P. 15(a)(1)(B), Plaintiff intends to file a First Amended Class
8 Action Complaint on or before July 3, 2014—i.e., within 21 days of service of Defendants’ motion
9 to dismiss. However, to the extent that the Civil Local Rules of this District require Plaintiff to file
10 a response to the pending motion on or before June 26, 2014 (i.e., per Civil L.R. 7-3), Plaintiff
11 submits this statement pursuant to Civil L.R. 7-3(b), without prejudice to any opposition he may
12 raise to the arguments asserted in Defendants’ motion. In submitting this statement, Plaintiff
13 respectfully notifies the Court that he intends to file a First Amended Class Action Complaint as a
14 matter of course and for his response to Defendants’ motion.

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1 Respectfully submitted,

2 Dated: June 26, 2014

3 **JOSHUA SMITH**, individually and on behalf of all
others similarly situated,

4 By: /s/ Benjamin S. Thomassen
5 One of Plaintiff's Attorneys

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16 *Attorneys for Plaintiff and the Putative Class*

CERTIFICATE OF SERVICE

I, Benjamin S. Thomassen, an attorney, hereby certify that on June 26, 2014, I served the above and foregoing ***Plaintiff's Statement of Non-Opposition and Notice of Intent to File First Amended Complaint*** by causing a true and accurate copy of such paper to be filed and served upon all counsel of record via the Court's CM/ECF electronic filing system.

/s/ Benjamin S. Thomassen